

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6157

APPEAL OF SORAYA KARMAND

OPINION OF THE BOARD

(Hearing held January 31, 2007)
(Effective Date of Opinion: May 25, 2007)

Case No. A-6157 is an administrative appeal filed by Soraya Karmand (the "Appellant") from the May 24, 2006 decision of the Historic Preservation Commission (the "HPC") to deny Historic Area Work Permit No. 410892 for the retroactive issuance of a permit to construct an asphalt driveway and parking pad on the property located at 12312 Riding Fields Road, Rockville, Maryland 20850 (the "Property").

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq., of the Montgomery County Code, the Board held a public hearing on the appeal on January 31, 2007. The Appellant was represented by John A. Moody, Esquire. Associate County Attorney Malcolm Spicer represented the HPC.

Decision of the Board: Administrative appeal **denied**.

FINDINGS OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 12312 Riding Fields Road and "Mount Prospect," was put on the County's index of historic properties in 1976, and was individually designated on the Master Plan for Historic Preservation in Montgomery County in 1990 as a significant, intact example of an early 20th century rural farmstead, and thus as an historic site (Master Plan Site #25/08). A Montgomery County publication, *Places from the Past: The Tradition of Gardez Bien in Montgomery County, Maryland*, inventories historic sites and districts in Montgomery County, and includes the following description of the architecture and historic context of this Property:

Constructed about 1902, Mount Prospect is a significant local example of Colonial Revival design. The substantial residence was designed by Rockville architect Thomas C. Groomes. The front façade of the 2½-story, five bay dwelling is graced by a pedimented three-part window with finely detailed applied molding. A Palladian-style dormer window punctuates a low hip roof with generous eaves. Unusual and noteworthy rectangular attic windows are built into the wide cornice. The corners of the house are embellished with classical pilasters. A one-story front porch spans the width of the house.

Moses and Julia Montgomery built the house and operated a farm here for some 15 years. Between 1941 and 1989, brothers Ira and Charles Ward farmed the property, growing corn and wheat and raising cattle and hogs. In addition to the house, which is the oldest structure on the property, the farmstead includes significant early 20th century outbuildings built by the Ward brothers. A hay barn built in 1942 when modern construction methods were available nonetheless follows local traditions with timbers that are sawn, mortised and tenoned, and pegged. The smaller granary, built soon after, uses the same materials and techniques. The corncrib, dating from the 1960s, is also traditional in design and appearance.

See Exhibits 6(e) and 7(r).

2. The Appellant, who is the owner of the subject Property, sought retroactive permission from the HPC to alter her gravel driveway by paving it with asphalt. Appellant's HAWP application indicates that she is seeking retroactive permission to renovate her driveway, indicating that the proposed driveway will have a stone base with three inches of asphalt hot surface mix, and that all of the homeowners on Riding Fields Road have the exact same driveway in width and material. See Exhibit 6(a).
3. The Appellant submitted a completed application for Historic Area Work Permit ("HAWP") No. 410892 for the above work to the HPC on May 3, 2006 (Exhibit 6(a)). On May 17, 2006, HPC staff recommended denial of the application pursuant to Section 24A-8(a) of the Montgomery County Code and as being inconsistent with the *Secretary of the Interior's Standards for Rehabilitation*, 36 CFR 67 ("*Secretary's Standards*"), saying, among other things, that:

"[w]hen the Commission evaluates alterations and changes to a farmstead, they analyze the impact of those changes on the resource's historic context. A gravel driveway approach, which loops around the property to provide access to the main house and outbuildings, is a typical and common utilitarian feature on a farmstead. The proposed asphalt material change, with a large asphalt parking pad abutting the front porch of the historic house is inconsistent with the rural, farm setting of this historic resource. Altering and eliminating portions of the original driveway and the installation of a parking pad in front of the main house negatively

impacts the integrity of this historic resource and its associated agricultural landscape.”

See exhibit 6(b). On May 24, 2006, the HPC held a public hearing on the application and, at its conclusion, determined to deny the HAWP. The HPC, guided by Chapter 24A of the County Code and the *Secretary's Standards*, issued a Decision and Opinion to this effect on June 7, 2006, with the following findings:

1. The proposed driveway material change and parking pad installation will destroy the context that defines this historic property located in a rural setting.
2. The proposal for asphalt paving, both because it is a material not commonly found in rural settings and because of the extent of the material that is used on the front yard of this historic resource constitutes changes that specifically impair the existing integrity of this resource and its environmental setting as part of a rural landscape. The natural, gravel paving of the previous driveway, because of its architectural fabric and design, contributed to the historic character of the Mount Prospect site as a whole in a manner that the asphalt paving does not.
3. The testimony on fire safety issues with gravel driveway surfaces was not persuasive. The architects on the Commission provided testimony, which conveyed a gravel driveway surface could be engineered to accommodate fire safety¹ and the current residential building (ICC 2003) and fire code (NFPA-101/1997) utilized in Montgomery County does not require asphalt surfaces for residential applications.

See Exhibits 6(e) and 7(r).

The Appellant timely filed this appeal of the HPC's written Decision and Opinion to the Board of Appeals on June 26, 2006.

4. Ms. Gwen Wright testified on behalf of the HPC. Ms. Wright testified that she has worked at the Historic Preservation Commission since 1987, and that she is currently the Acting Chief of the County-wide Planning Division.

Ms. Wright testified that she is familiar with the subject Property. She stated that the property was put on the historic index in 1976, and that it was designated on the Historic Master Plan as an historic site in 1990. Ms. Wright testified that she was very involved with that designation.

¹ Indeed, the transcript of the original HPC includes the following statement by Commissioner Duffy: “I’d like to state for the record that being an architect who’s worked with fire officials in quite a few different jurisdictions, that there are many different ways to accommodate emergency vehicles adequately including a properly engineered, properly constructed compacted gravel driveway. It’s a non-issue and it’s certainly something that could be done if done properly, I’m sure in a way that would be acceptable to authorities in Montgomery County.” Commissioners Fuller (“I agree with my fellow Commissioner that you can engineer a gravel driveway to support all kinds of loads.”) and Commissioner Alderson (“it’s a matter of proper installation”) then spoke in agreement. See Exhibit 6(c)(at pages 63 and 64 of HPC hearing transcript).

Ms. Wright testified that the property was built in 1902 and was sophisticated for this part of the County. She stated that it was a Georgian revival style. She testified that the architectural details and outbuildings were emblematic of the County's agricultural past. She said that the Property was originally 150 acres, and that the house was the central farm on the Property. She stated that the Property was still 150 acres when it was listed on the Master Plan, but that it was subdivided three years later.

Ms. Wright testified that the HPC was involved with the subdivision process. She stated that the HPC wanted the Property to maintain its character as an historic farmstead. Ms. Wright testified that although the Property was zoned RE-2, two acres was not enough to maintain the character of the Property, and that the HPC was successful in getting 14 acres preserved so that the Property would continue to represent its agricultural origins. She stated that this is now a small farmette in the midst of development. Ms. Wright testified that in addition to the house, the site and the outbuildings are important, and that the 14 acres preserved with the house have not been changed in terms of grading or features or outbuildings. Ms. Wright testified that any change to the environmental setting of this Property that would significantly alter its character would require a HAWP, and that this would include changes to the driveway.

Ms. Wright testified that Exhibit 13(a) is a photograph taken in 2003 which shows the back of the house with a circular driveway made of packed gravel. She stated that farm roads were made of a mix of gravel and dirt.

Ms. Wright testified that she is familiar with the HAWP application for this property. She testified that the Property owner had paved the driveway from the road to the house, and had also paved a large area in the front yard of the house as a parking pad. See Exhibit 6(b) at circle 5, describing a 50' by 60' parking pad. Ms. Wright testified that the Property previously had a small gravel parking area to the left of the house, and that the new parking pad is located where there had been grass in 2003. Compare Exhibit 14(a) (2005 photo) with Exhibit 13(e) (2003 photo).

Ms. Wright testified that all of the features associated with a structure contribute to its historicity, including its landscaping, trees, and outbuildings. She testified that under Chapter 24A of the County Code, the historic description of just the building is not enough to preserve historicity. She testified that changes other than changes to the main building can affect historicity. She testified that the authors of Chapter 24A showed a lot of foresight by protecting not just the building, but also its environmental setting where it was specifically called out in the designation.

Ms. Wright testified that Exhibit 14(b) shows the driveway entrance to the Property, with the historic house in the background. She testified that Exhibit 14(c) shows the driveway to the parking pad in the front of the house, as well as the parking area to the left of the house, where there had been gravel parking

and was now asphalt. She stated that it seemed as though the driveway had been slightly reconfigured. Compare Exhibits 15 and 16.

Ms. Wright testified as to how the paving had changed the character of the site. She stated that there was the change in the material itself, the width of the paving, and the extent of paving. She stated that historically you would not have found asphalt on a rural, private farmstead that asphalt was expensive and farms typically used dirt and gravel. She stated that while there may be farms not designated as historic sites where farmers have added asphalt, the majority of historic and non-historic farms still retain a combination of dirt and gravel roads. She testified that the paving had made this Property more suburban and modernistic. Ms. Wright testified that the changes to the driveway and the paved area in front of the house changed the setting of the house substantially and dramatically, and were detrimental to the historic setting and character of the site.

Ms. Wright testified that gravel is a natural stone substance that, unlike asphalt, is not manufactured. She stated that farm roads need new gravel periodically (possibly grading and gravel) to ensure that they do not become too rutted from heavy farm machinery. She agreed that properly maintained gravel roads can handle heavy traffic, and cited the gravel parking areas at the County fairgrounds.

Ms. Wright testified that she recalled being at HPC meetings in which the commissioners told Appellant that she needed to get HAWPs prior to making changes to her Property.

Ms. Wright testified as to the legal standards under which the HPC operates. She testified that Section 24A-8 of the County Code was cited by the HPC in the denial of this HAWP, and that the HPC has also adopted the *Secretary's Standards*. She testified that the HPC made findings in relation to Chapter 24A and the *Secretary's Standards* numbers 2, 6, 9, and 10 in connection with this denial. She testified that Standard number 2 provides that the historic character of the Property must be retained and preserved, and that the change to the paving material had had a detrimental impact on this. She testified that Standard 6 says that historic features should be repaired, not replaced. She testified that the driveway was an historic feature of this Property that should have been repaved with gravel, not replaced with asphalt. She testified that Standard 9 says that you should not destroy the historic materials that characterize the Property. She stated that the changes made affected the materials and special relationships of this Property which gave it its agricultural character. She testified that Standard 10 requires that changes made be reversible. With respect to this Standard, Ms. Wright testified that the asphalt could be dug up and thus presumably restored to its gravel state.

Ms. Wright testified that because this site was an individually designated site on the Master Plan (as opposed to being a site located in an historic district), any proposed changes receive the highest level of scrutiny under the County's regulations. See Exhibit 6(g), Section 1.5 of COMCOR. She stated that it is

reviewed under Section 24A-8 of the County Code and under the *Secretary's Standards*.

On cross-examination, Ms. Wright testified that the last time she had been at the property was several years ago, and that the neighborhood had changed substantially. She stated that the original 150 acres had been subdivided, and that there were many new homes. She agreed that Exhibit 17 contained photos of the Property and house from various vantage points, and that the house had been restored. She agreed that the neighboring houses all had asphalt driveways.

Ms. Wright testified on cross-examination that the this house was not on the National Register, but that it was designated on the Master Plan, and was on a Maryland list of historic properties. She testified that there was no plaque to show the historic designation of the house. She testified that a citizen could find out about this historic site by looking on the Park and Planning website on history and archaeology. She testified that properties which are individually designated and in private ownership are not open to the public. The only way for the public to perceive this Property would be to stand at the base of the driveway.

Ms. Wright agreed on cross-examination that the change from 150 acres to 14 acres did change the historic context of this Property. She continued by testifying that we live in a County where there are dynamic changes and growth, and that nothing in the County looks like it did 100 years ago, but that the County is trying to retain some sense of its history.

When asked on cross-examination if the HPC would require the use of asbestos on a property because that was the material historically used, Ms. Wright said no, testifying that there are new materials that look just like asbestos but aren't made of it. She testified that the purpose of historic preservation is to retain the historic and environmental character of a property to the extent possible while accommodating change in a reasonable way. She read the purpose clause in Section 24A-1 of the County Code into the record.² Ms. Wright testified that the Petitioner's driveway has dramatically changed the character of this historic site and is therefore detrimental to its preservation.

Ms. Wright agreed on cross-examination that under Section 24A-8(a) of the County Code, the protection of the historic site was also important, stating in

² Section 24A-1 reads as follows:
Sec. 24A-1. Purpose.

It is the purpose of this chapter to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural or cultural value in that portion of the county which is within the Maryland-Washington Regional District. Its further purpose is to preserve and enhance the quality of life in the county, safeguard the historical and cultural heritage of the county, strengthen the local economy, stabilize and improve property values in and around such historical areas, foster civic beauty and to preserve continued utilization and pleasure of the citizens of the county, the state, and the United States of America. (Ord. No. 9-4, § 1; Ord. No. 11-59.)

response to a question that she did not know how far the Property was from a fire hydrant or pond.

In response to a Board question regarding other large historic sites with gravel driveways, Ms. Wright testified that there are dozens of individually designated sites and hundreds of historic district sites that have gravel driveways. As an example, she cited Rocklands in Olney as a farmhouse with a gravel driveway that is now surrounded by townhouses, but stands out as different. She stated that she is not familiar with how to construct a gravel driveway.

In response to a Board question asking if the HPC was required to preserve the view shed, Ms. Wright responded that the HPC thought that retaining 14 acres did just that, that the HPC wanted to retain some sense of this Property's rural past, and that adhering to the two acre minimum allowed by the Zoning Ordinance would not have done this. She testified that preserving all 150 acres would have been great, but that to require the preservation of all 150 acres would not be fair to the Property's owner, given the RE-2 zoning of the Property.

5. Ms. Michelle Oaks, an historic preservation planner with the HPC, testified for the County. Ms. Oaks testified that she was the staff person assigned to this case, and that she prepared the report recommending denial, which the HPC adopted.

Ms. Oaks testified that the proposal was inconsistent with the rural farmstead setting of this Property, that it destroyed the interplay between the setting and the house, and that it eliminated the green space in front of the house. She testified that the proposal was inconsistent with and detrimental to the preservation of the historic site (under 24A-8(a)), and that it was also inconsistent with Standards 2, 6, 9, and 10.

Ms. Oaks testified that she is not aware of the HPC having approved the replacement of any other gravel driveways with asphalt. She emphasized that it is important for HPC staff to ensure consistency of approach and application of the *Secretary's Standards* among the various HPC decisions.

In response to a Board question asking whether purchasers of historic sites are given information with respect to the historic site, Ms. Oaks testified that a 1995 Maryland law requires that a purchaser of an historic property sign a document indicating that they are aware they are purchasing an historic property, and that they need to consult with the HPC before making changes to the exterior of the building. She testified that there are State and County tax benefits for owning an historic property.

On cross-examination, Ms. Oaks testified that she does not know whether or not the Petitioner signed such a document, but testified that she met with the Petitioner and her architect on March 18, 2003 to discuss HAWPs, prior to any work being done on the house. She further testified that when a person applies for a building permit for an historic property, a flag is triggered at the Department of Permitting Services indicating the need to go to the HPC. In response to a

question from counsel for the Appellant, Ms. Oaks agreed that there is no evidence that his client had notice that she couldn't change the driveway.

In response to a Board question asking how a purchaser would know about an historic designation, Ms. Oaks testified that all owners of historic properties receive quarterly newsletters. She also testified that realtors are required by law to disclose this when selling a property. She stated that a contract purchaser can come to the HPC and consult with them in deciding whether or not to purchase an historic property.

When asked on cross-examination if the parking pad in front of the house was visible from the road (see Exhibit 17(a)), Ms. Oaks testified that the historic resource is the whole property, not just the view from the base of the driveway, and stated that having an asphalt parking pad abut this historic house is completely inappropriate. In response to a Board question, Ms. Oaks testified that there is not a requirement that the environmental setting in its entirety be visible from a public right of way. Ms. Oaks went on to testify, in response to a statement from Appellant's counsel that because this was private property, its historic value was the view from the street, that the Appellant is the steward of this historic property, and that the Property would be here longer than she would. Ms. Oaks testified that this Property is an important resource to the County and in teaching the County residents and visitors about its past. She testified that the Appellant's changes would ultimately affect the history of the County.

When asked on cross-examination how the changes to this Property had affected or destroyed a County resource, Ms. Oaks testified that this farmstead property was designated for its architectural history, that its architect (Groomes) was an important architect in the County. She continued by testifying that its very important to note that it's not just the house, but also the outbuildings, landscape, trees, light poles, and roads which are all features of this historic setting. Ms. Oaks testified that she recommended denial of this HAWP because it used the wrong material and because it changed the orientation of the driveway.

Ms. Oaks later testified that both HPC staff and Montgomery County Fire and Rescue ("MCFR") staff sit on the Development Review Commission, and that she had asked Captain John Phizner of MCFR, who sits on the Development Review Commission, whether the County had specific requirements regarding driveway materials for single family homes (i.e. whether the County mandates the use of a specific surface(s)). Ms. Oaks testified that Captain Phizner indicated that the County does not impose specific requirements regarding driveway materials for single-family homes.

6. Mr. Matthew Kelleher, CFEI, Fire Inspector, testified for the Appellant. Mr. Kelleher indicated that he works for MCFR and is assigned to the Fire Marshall's office. He stated that he has worked for MCFR for 30 years, started his career in Olney, and has been involved with two fires in historic properties. He was accepted as an expert in fire safety. He indicated that he was not testifying on

behalf of MCFR, but rather that his testimony expressed his own opinion, based on his experience, with respect to questions about fire protection.

Mr. Kelleher testified that a fellow officer, Captain Garcia, has contacted him about fire apparatus access to this Property.³ He testified that as a result of talking to Captain Garcia, he went by the Property. He testified that he found a driveway going to a home and two outbuildings. He stated that in his experience, these types of properties are often targets for fires. He testified that Fire Code NFPA 914 addresses fire protection of historic properties. See Exhibit 7(i). He stated that the fire code is considered part of the building code, but that for the most part the NFPA provisions are used as guidelines. He testified that there are more restrictive requirements that would come into play before NFPA 914.

In response to a Board question asking why, given the proliferation of gravel driveways, a gravel driveway was not acceptable on this Property, Mr. Kelleher testified that all gravel driveways are a concern, further stating that in looking at this Property from a fire protection vantage point, the gravel driveway could delay fire apparatus. He made clear that he was speaking as an individual, but with professional experience.

Mr. Kelleher testified that he wrote the 5/23/06 letter to John Moody for use at an HPC meeting that he could not attend in person. See Exhibit 7(i) at page 9. He testified that the letter indicated that every second counts when fighting fires, and that the goal of MCFR was to save property and to get to the fire as fast as possible regardless of conditions. His letter stated that snow or rain can quickly turn a gravel road into a bog, and indicated that in inclement weather he has seen fire apparatus unable to negotiate or even use unpaved roads. He testified that when asked if it was better to have a gravel driveway or a paved driveway, he answered paved because trucks can get stuck in gravel, later testifying that based on his thirty years of experience, it was his opinion that an asphalt driveway was safer (from a fire protection standpoint) in all cases than a gravel driveway. He testified on cross-examination that based on his history and experience, asphalt has never failed, but gravel has. He also noted that there were times when gravel had worked.

7. Dr. Soraya Karmand, DDS, Appellant, testified that she purchased the Property in 2003, and that she decided to pave the driveway in 2005. She testified that the Property had a gravel driveway when she purchased it, and that she had spent \$7,000 having additional gravel put out front and on her driveway. She testified that all sizes of cars and trucks got stuck on her gravel driveway, and that she took the contractor who had provided the gravel to court. She said that his lawyer stated that "this is the best you can do with gravel." She testified that after three or four months of seeing what he could do with gravel, she opted for asphalt. She stated that since having the asphalt driveway installed, she has had no trouble with cars getting stuck on her driveway.

³ Appellant testified that Captain Garcia was a client of hers, and that when she received an order of abatement regarding her driveway from the District Court, indicating that she should remove her driveway, she told Captain Garcia that she was concerned for her safety. She stated that Captain Garcia said he would look into it.

Dr. Karmand testified that the driveway company told her that no permit would be needed for the asphalt driveway as long as it was not changed in size and did not extend all the way to the street. She testified that the contractor was not aware that this was an historic property.

Dr. Karmand testified that her driveway is almost a mile long, and that there are two barns approximately ½ mile behind her house.

Dr. Karmand testified that she lives alone and is concerned for her safety, particularly that an ambulance be able to reach her in the event that she needs assistance.

Dr. Karmand testified that she was issued a citation by DPS for her asphalt driveway. She testified that she went to court in Silver Spring, but could not find the correct courtroom. She testified that a judgment against her was quickly obtained in her absence, despite her having been present at the courthouse.

Dr. Karmand testified that she did not know a permit was necessary to pave her driveway. She stated that the front approach to her house has changed, that she used to have grass and gravel in front and on the side. She testified that all sides are mud and grass, and that she can't maintain it. In response to a Board question, she stated that the parking area on the side of her house, which had been gravel, was now just mud, that there was no gravel left. She testified that cars were getting stuck on her property.

Dr. Karmand testified that the parking pad in front of her house is only large enough for an average-sized car to turn around. She testified that the asphalt was laid on top of the gravel, and that the driveway was neither wider nor longer as a result of the paving.

In response to earlier testimony, Dr. Karmand testified that she found out that the house was an historic home after she purchased it by talking to the previous owners while they were moving out. She testified that she has never received tax deductions because of the historic designation of the house. She testified that she has never received any HPC newsletters.

CONCLUSIONS OF LAW

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:
“Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission’s decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.”
2. Ordinarily, as this Board has previously held, when an appeal from a quasi-judicial body is heard “de novo,” the matter is to be tried anew as if it had not been heard before and as if no decision had been previously rendered. In effect, the Board is exercising what amounts to original jurisdiction. For all intents and

purposes, it is the first hearing of the case. *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 768 A.2d 131 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991).

However, the Board is accorded some flexibility in pursuing a “de novo” inquiry. The Maryland courts have stated that the meaning of the term “de novo” with respect to administrative appeals may vary with the subject matter of the review, the function of the agency, or the nature of the remedy. *Boehm*, 459 A.2d at 598. “There are many provisions in Maryland law for what are loosely termed de novo ‘appeals.’ Some of these appeals are less ‘de novo’ than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process.” *Lorhmann*, 500 A.2d at 348.

In this case, the function of the Board is not, as it is elsewhere in the Code provided, to “hear” or “decide” the matter “de novo” (see, e.g., appeals from the Sign Review Board, Section 59-F-10.3). Under the Historic Preservation ordinance, rather, the Board’s function is to “review the [HPC] decision de novo.” We must assume that the County Council meant to use these particular words, and we must give them meaning. In order to review a decision, we must consider the decision. We think it is altogether appropriate, then, for the HPC to participate in the hearing and present its findings and reasons for making the decision that it did.

With respect to the burden of proof, Section 2A-8(d) of the County’s Administrative Procedure Act, which governs this proceeding, states unequivocally that “where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority.” Section 2A-10(b) provides that “all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.” Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. The Appellant may produce evidence to the contrary. The Board’s duty is to determine, by a preponderance of the evidence presented by all of the parties, whether the HAWP was correctly denied.

3. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:
 - “(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.
 - (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

- (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
 - (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
 - (3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or
 - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
 - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
 - (6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.
- (c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.
- (d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

We must also consider the criteria for HAWP approvals set out on the HPC’s regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

- “(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:
- (1) The criteria in Section 24A-8.
 - (2) *The Secretary of the Interior's Standards and Guidelines for Rehabilitation.*
 - (3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.

- (4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.
- (b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the *Secretary of the Interior's Standards and Guidelines for Rehabilitation*, the master plan guidance shall take precedence.”

In addition to being reviewed under Chapter 24A of the Montgomery County Code, alterations to historic resources that are individually designated on the Master Plan are reviewed under the *Secretary's Standards*. Testimony and evidence of record indicate that the *Secretary's Standards* that are most pertinent to the analysis of this case are Standards 2, 6, 9 and 10, which state:

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

See Exhibits 6(b) and 6(i).

4. Section 24A-1 of the Montgomery County Code sets forth the purpose of the historic preservation chapter:

It is the purpose of this chapter to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural or cultural value in that portion of the county which is within the Maryland-Washington Regional District. Its further purpose is to preserve and enhance the quality of life in the county, safeguard the historical and cultural heritage of the county, strengthen the local economy, stabilize and improve property values in and around such historical areas, foster civic beauty and to preserve continued utilization and pleasure of the citizens of the county, the state, and the United States of America.

5. Section 24A-2 of the Montgomery County Code contains definitions: “Appurtenances and environmental setting” is defined as follows:

“The entire parcel, as of the date on which the historic resource is designated on the master plan, and structures thereon, on which is located an historic resource, unless reduced by the District Council or the commission, and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways.”

“Historic resource” is defined by that section as:

“A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture.”

6. From these regulations and standards, we glean the following guiding principles applicable to the Appellant’s HAWP proposal:

- The purpose of the historic preservation chapter is to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural or cultural value in that portion of the county which is within the Maryland-Washington Regional District. Section 24A-1.
- The “appurtenances and environmental setting” of this historic Property include its driveway. Section 24A-2.
- The historic character of the Property must be retained and preserved, and the removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize the Property should be avoided. Standard 2.
- The HAWP must be denied if the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic Property, and to the purposes of Chapter 24A. Section 24A-8(a).
- Deteriorated historic features must be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the old in design, color, texture, and where possible, materials. Standard 6.
- The proposal must avoid the removal of distinctive or historic materials or the alteration of features, spaces, and spatial relationships that characterize this Property. Standard 9.
- The proposal must be such that, if the work proposed were removed in the future, the essential form and integrity of this historic Property and its environment would be unimpaired. Standard 10.

7. Applying these guiding principles to the HAWP application before us, we find that the weight of evidence does not support approval of the proposed work.

The evidence before the Board establishes that the Property at 12312 Riding Fields Road (“Mount Prospect”) was put on the Montgomery County index of historic properties in 1976, and was individually designated on the Master Plan for Historic Preservation in Montgomery County in 1990 as a significant, intact example of an early 20th century rural farmstead (Master Plan Site #25/08). See Exhibits 6(e) and 7(r). The use of the word “farmstead” indicates that this designation is broader than just the farmhouse itself, and should be viewed as also including the outbuildings and surrounding service areas of the farm. See, e.g., Merriam-Webster’s Online Dictionary.⁴ Indeed, undisputed testimony indicates that in addition to the house, the site and its outbuildings were important to the historic designation of this Property, and were emblematic of the County’s agricultural past. The Property when designated was 150 acres, but was subsequently subdivided. Testimony indicates that the HPC was involved with the subdivision process, and was concerned that the Property maintain its character as an historic farmstead. Testimony indicates that the HPC was successful in getting 14 acres preserved so that the Property would continue to represent its agricultural origins, and that these 14 acres have not been changed in terms of grading or features or outbuildings.

Testimony and evidence of record make clear that this Property had a gravel driveway when Appellant purchased it, and that there was a gravel parking area on the left side of the house. While there is evidence to indicate that asphalt was available at the time the house on this Property was built, uncontested testimony indicates that historically, this particular farmstead had a gravel driveway, and that gravel and dirt roads were typical of privately-owned farmsteads such as this one. The Board thus finds that the (former) natural gravel driveway of this Property served to reinforce the past use of this Property as a farm, and that it contributed to the historic character of the site as a whole.

In light of the foregoing, and of the definitions of “historic resource” and “appurtenances and environmental setting” set forth in Section 24A-2, it is clear that this historic farmstead, as designated, includes its appurtenances and environmental setting, which, as shown by the evidence and indicated by definition of that term, include its (former) gravel driveway, and that changes to these aspects of this historic resource are subject to the County’s Historic Preservation Ordinance.

8. Testimony and evidence of record indicate that the neighboring properties in the surrounding (new) subdivision have asphalt driveways. The Board finds that one of the features that helped to define this Property as a farmstead and to distinguish it from the surrounding suburban development was its gravel driveway. The Board observes that the photographs in the record, depicting the Property with a gravel driveway and later with an asphalt driveway, graphically

⁴ “Farmstead” is defined by the Merriam Webster Online Dictionary as “the buildings and adjacent service areas of a farm; *broadly* : a farm with its buildings.”

depict the significant change in the nature of the Property that occurred as a result of the change in driveway materials. See Exhibits 13 and 14, and Transcript at page 114.⁵ The Board finds that the change in the nature of the Property that resulted from the use of asphalt has negatively impacted the integrity of the historic resource and its associated environmental setting, and is inconsistent with and detrimental to the preservation of this historic farmstead. Thus under the criteria set out in Section 24A-8(a) of the County Code, the Board finds that the HPC was correct to deny this HAWP.

The Board observed that the large, newly paved “parking pad” area adjacent to the front of the house makes the house appear as though it is a country store instead of a farmhouse. See Exhibit 14(a) (photograph of house with asphalt parking pad) and Transcript at page 114. The Board finds that this change, too, has negatively impacted the integrity of this historic farmstead and its associated agricultural setting, and is inconsistent with and detrimental to its preservation. Again, under the criteria set out in Section 24A-8(a) of the County Code, the Board finds that the HPC was correct to deny this HAWP.

9. The Board finds, based on the testimony and evidence of record, that the installation of the asphalt driveway and parking pad had the effect of removing the distinctive gravel driveway that formerly led to this Property and that characterized it as a rural farmstead, in contravention of the *Secretary’s Standards*, Standard 2. The Board further finds that the installation of an asphalt driveway in place of a gravel driveway also contravenes Standard 6, which states that deteriorated historic features must be repaired rather than replaced, and that if replacement is necessary, it should match the former feature in design, color, texture, and where possible, materials. The Board finds that contrary to Standard 9, the installation of the asphalt driveway, and the installation of the large, paved parking pad immediately in front of this home, had the effect of not only removing historic or distinctive material (gravel), but also of altering features that characterize this Property. With respect to Standard 10, the Board notes that testimony indicates that the asphalt driveway and parking pad could be removed, and the gravel and grass restored.

Thus the Board finds that the HPC correctly concluded that the proposed work did not meet the *Secretary’s Standards*. Standards 2, 6, and 9, and that while the proposal may have complied with Standard 10, the HPC nevertheless correctly concluded that the proposed HAWP must be denied for failure to meet the *Secretary’s Standards*.

⁵ Chairman Fultz stated that “[a]mong the features that helped define this Property as a farmstead as opposed to pieces of suburban development included the roadways on their Property which were made of gravel and it’s clear from the evidence, we’ve got all of the photos of [exhibit] 13(d), and in contrast to the photo of 14(a), which shows that there really is a significant change in the nature of the Property. When you pave large areas adjacent to the house with asphalt, it doesn’t look like a farmhouse anymore. It looks like a country store.”

10. With respect to fire safety, the Board acknowledges Appellant's concerns and those expressed by Mr. Kelleher. The Board notes Appellant's inability to produce any evidence, despite repeated requests, which would indicate that the County requires the use of particular materials (or conversely, prohibits the use of materials which it might deem unsafe) in driveways serving single family residences.⁶ Despite testimony from Dr. Karmand and Mr. Kelleher that traversing gravel driveways can, at times, pose problems, there was also testimony that numerous residences in the County, including historic properties, have gravel driveways, and testimony in the record from knowledgeable commissioners of the HPC that a properly engineered, properly installed compacted gravel driveway could accommodate emergency vehicles. Since the County allows driveways to be constructed of gravel, and since credible testimony at the HPC hearing indicated that gravel driveways can be constructed so as to be able to accommodate emergency equipment, the Board finds that in this case, given the historical use of gravel at this Property and its contribution to the character of this historic resource, this driveway should remain constructed of gravel. The Board notes that "protection" of the historic resource as used in Section 8-24(a) means more than just protection from fire, and thus does not accept Appellant's argument that an asphalt driveway is necessary for the protection of this historic resource.

Accordingly, this Board finds by a preponderance of the evidence that that the HPC's denial of the requested HAWP was correct and proper. The Appellants' appeal is therefore **DENIED**.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Member Catherine Titus, seconded by Member Caryn Hines, with Chair Allison I. Fultz, Vice Chair Donna Barron, and Member Wendell M. Holloway in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

⁶ Ms. Oaks testified that Captain Phizner of MCFR had confirmed that the County does not require that residential driveways be constructed of any particular material.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 25th day of May, 2007.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County on accordance with the Maryland Rules of Procedure.